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May 21, 2021

VIA ECF

Judge Cheryl L. Pollak
United States Magistrate Judge
U.S. District Court Eastern District of New York
225 Cadman Plaza East
Courtroom 13B - South
Brooklyn, NY 11201

RE: Star Auto Sales of Bayside, Inc., et al. v. Voynow, Bayard, Whyte and Company, LLP,
et al.
Docket No.: 1:18-cv-05775
Our File No.: 03127.01373

Dear Judge Pollak:

This firm represents Defendants in the above-referenced matter.

We are writing due to a dispute between the parties regarding a subpoena Defendants would like to serve on Rosenfield & Company ("Rosenfield"). As Your Honor is aware, this case is a professional liability action filed against the Defendant accountants. Plaintiffs are a group of automobile dealerships and allege that several employees engaged in various fraudulent schemes over the course of several years. Plaintiffs allege that the Defendants failed to detect these various purported frauds or otherwise violated applicable professional standards.

According to the Complaint, the fraud was initially discovered in late 2016. In early 2017, Plaintiffs retained Rosenfield for purposes of a forensic accounting to investigate the extent of fraud. Both Plaintiffs and Defendants have listed Rosenfield in their respective Rule 26 Disclosures as a person having information relevant to the case. Based upon documents produced by Plaintiffs, Rosenfield communicated with the police, the District Attorney's office, and at least one insurance adjuster, and provided extensive documents as to its forensic analysis and its findings as to the suspected fraud. Rosenfield also replaced Defendants in December of 2017 with regard to Defendants' tax engagement, such that Rosenfield prepared Plaintiffs' 2016 and 2017 tax returns. While Plaintiffs' document production response includes substantial documents from Rosenfield regarding its findings and services, Defendants do not believe all pertinent documents have been produced. It has therefore issued a subpoena, a copy of which is attached.

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Plaintiffs' counsel has objected to the subpoena, citing FRCP 45(d)(3)(A)(iii) and 45(d)(3)(B)(iii), as well as FRCP 26(b)(1). Counsel had a telephone conference about a week ago to see if the dispute could be resolved. Because it cannot, we are bringing it to the Court's attention. Counsel for both parties are available for a telephone conference at the Court's convenience. Alternatively, if the Court prefers, we can each submit briefs on this issue for your consideration.

We thank you for your consideration of this matter and are available at the Court's convenience.

Very truly yours,



Maureen P. Fitzgerald

MPF:ls

Enclosure

cc: Jamie Felsen, Esquire
Emanuel Kataev, Esquire
Jeremy Koufakis, Esquire
Jack Slimm, Esquire

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